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**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
) CC Docket 98-79
GTE Telephone Operating Companies)
GTOC Tariff FCC No. 1)
GTOC Transmittal No. 1148)

COMMENTS OF U S WEST, INC. ON DIRECT CASE OF GTE

U S WEST, Inc. ("U S WEST"), pursuant to the Commission's August 20, 1998 Order Designating Issues for Investigation and September 3, 1998 Public Notice, hereby submits comments on GTE's Direct Case. The principal issue in this proceeding is whether GTE's Asymmetrical Digital Subscriber Line ("ADSL") service offering is an interstate service subject to the Commission's jurisdiction or an intrastate service. U S WEST agrees with GTE that the service is interstate and therefore subject to Commission jurisdiction.

The arguments to the contrary are unconvincing and, in many cases, contrary to a substantial body of Commission and judicial precedent. In particular, there is no merit to the claim that all DSL calls terminate at the ISP simply because the Commission classifies information service providers as "end users" for purposes of access charges. That so-called "ISP exemption" relates only to pricing; it makes certain interstate access services subject to state tariffed rates instead of the federal rates that otherwise would apply. The exemption has no bearing on the jurisdictional nature of ISP traffic. ISP traffic, like all other types of traffic, is subject to the well established principle that a call's termination point for jurisdictional purposes is the final destination of the communication, regardless of the intermediate steps involved. And

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an ISP is not the final destination of its customers' calls. Rather, the ISP is an intermediary that enables its customers to establish communications links with Internet sites around the country and indeed the globe. Those distant sites are where Internet traffic -- such as traffic delivered over GTE's ADSL service -- terminates.

In addition, some of the parties petitioning for the rejection of GTE's tariff ("petitioners") dispute GTE's characterization of ADSL as an access service. However, their arguments prove only that ADSL is not an exchange access service -- a point that is irrelevant to the jurisdictional question at issue in this proceeding. ADSL is not exchange access, because it does not involve the local telephone exchange, but it is an access service nonetheless: It provides for the origination and termination of Internet communications. Since those Internet communications are predominantly interstate, ADSL is interstate as well.

Finally, some of the petitioners note that U S WEST has tariffed its DSL services at the state level. See Pet. of America Online at 2 & n.7; Pet. of California Cable Television Ass'n at 2 n.5; Pet. of Public Util. Comm'n of Oregon at 2. But U S WEST's decision should not affect the Commission's determination of the appropriate regulatory treatment of DSL services under the Communications Act, and does not change the fact that much of the traffic originated and terminated over such services is interstate in nature.^{1/} As the first LEC to introduce DSL, U S WEST made its decision amidst considerable regulatory uncertainty. This proceeding provides an opportunity for the Commission now to supply regulatory guidance that has been lacking.

^{1/} Of course, some DSL connections may be intrastate in nature -- for example, certain work-at-home applications.

1. When a Customer Calls an ISP To Access the Internet, the Call Does Not "Terminate" at the ISP.

Some of the petitioners have suggested that traffic from a customer to an ISP should be treated as terminating at the ISP. See Pet. of ALTS at 3; Pet. of Focal Communications at 3. They place heavy emphasis on the fact that the Commission classifies information service providers as "end users" in the context of the exemption from switched access charges. See id.; see also Pet. of e*spire Communications at 2. Petitioners' basic argument is that every call from a customer to an ISP is a complete and distinct communication, despite the fact that the call continues on and is ultimately a component of a longer Internet communication.

This argument cannot be logically sustained. As a preliminary matter, the Commission exempts ISPs from switched access charges precisely because it recognizes that much of the traffic between a customer and ISP, far from terminating at the ISP's premises, actually is part of an ongoing interstate call and thus is potentially subject to interstate access charges. See Access Charge Reform, First Report and Order, FCC 97-158 (rel. May 16, 1997) ¶ 341 (noting that ISPs use local facilities "to originate and terminate interstate calls" (emphasis added)). If such traffic terminated at the ISP, no exemption would be necessary.

Moreover, the Commission's decision to classify ISPs as end users for the purposes of switched access charges does not at all mean that calls from a customer to an ISP automatically "terminate" at the ISP's premises. To the contrary, Commission precedent makes clear that even a so-called "end user" can serve as an intermediate link in a communication whose termination point is elsewhere. As GTE points out (Direct Case at 22), the Commission has long required end users that subscribe to private line services to pay a "leaky PBX" surcharge if the private

network is used to any extent to carry interstate calls originating and terminating outside the private network (i.e., where the end user takes an incoming local call from one LEC, uses the private line to transmit the call across state lines, and then hands the call off to a LEC in the new state.) See 47 C.F.R. § 69.115. The Commission imposes this leaky PBX surcharge precisely because it considers such a communication to be a single interstate call originated by the first LEC and terminated by the second -- even though the intermediate entity, the owner of the private network, may be a legitimate “end user” of telecommunications services. See MTS and WATS Market Structure, 97 FCC 2d 682, 711-12 ¶ 78 (1983) (Like facilities-based interexchange carriers and resellers, a user with an interstate private line connected to a PBX uses LEC access services “for the purpose of completing interstate calls which transit its location. . . . [S]ome traffic may originate and terminate at the user location and other traffic may “leak” into the exchange in order that the calls can be completed at another location.” (emphasis added)). Indeed, the Commission imposes the surcharge as a proxy for ordinary interstate access charges, which cannot be determined with any precision in the private line context. See id. at 717 ¶ 86.

Thus, where an “end user” passes traffic from the originating LEC through to a third party -- as the private network owner does in the “leaky PBX” context, and as an ISP does every time it connects a customer to the Internet -- the traffic “terminates” at the ultimate end point of the communication. Contrary to the petitioners’ apparent assumption, the classification of the intermediate party as an “end user” rather than a carrier has no bearing on the termination point of the call.

The Commission's treatment of the "leaky PBX" problem is consistent with its well established policy of refusing to treat individual segments of a communications pathway as separate calls with their own originating and terminating points. Regardless of the specific context, the agency has always focused on the complete end-to-end path of the communication. Thus, the terminating point of the call is the final destination that the calling party reaches, not an intermediate facility controlled by one of the service providers along the way.

For example, as GTE points out (Direct Case at 11), the Commission expressly rejected the claim that 800 credit card traffic consists of two separate calls -- a (generally intrastate) call to an IXC's point of presence, and a (frequently interstate) call to the intended recipient. "We disagree with [the] argument that 800 credit card traffic terminates at the [IXC's] credit card switch for jurisdictional purposes . . . Switching at the credit card switch is an intermediate step in a single end-to-end communication." Southwestern Bell Telephone Company, 3 FCC Rcd. 2339, 2341 ¶ 28 (1988). Instead, the agency affirmed the view that "the jurisdictional nature of a call is determined by its ultimate origination and termination, and not . . . its intermediate routing." Id. ¶ 26 (emphasis added).

In another case involving 800 services, the Commission again stated that the proper focus was the "end-to-end nature of the communications." Long Distance/USA, Inc., 10 FCC Rcd. 1634, 1637 ¶ 13 (1995). The agency emphasized the importance of the customer's perception of the communication: "[F]rom the caller's point of view, any intermediate switching during the call is transparent . . . [T]he user of the [800] services intends to make a single call terminating not at the [IXC's] intermediate switch, where the 800 leg of the call's journey ends, but at the telephone line of the called party." Id. at 1638 ¶ 15. Thus, each 800 credit card call is treated as

a single call "regardless of whether [the] caller must dial a second number at some point before the call is completed." Id.

The Commission has applied the same principle to traffic associated with enhanced services. As long ago as 1983, the Commission recognized that a call from a customer to an enhanced service provider (ESP) does not necessarily -- and perhaps not even frequently -- "terminate" at the location of the ESP: An "enhanced service provider might terminate few calls at its own location." MTS and WATS Market Structure, 97 FCC 2d 682, 712 (1983). The obvious implication is that, if the ESP ultimately connects the customer with an information source off the ESP's premises, the call "terminates" at that remote information source. The Commission does not treat such a service as consisting of one call from the customer to the ESP and a second between the ESP and the remote information source, even though the ESP qualifies as an "end user" for access charge purposes..

Similarly, in evaluating the jurisdictional nature of a BellSouth voicemail service, the Commission rejected the argument that a message left by an out-of-state caller should be treated as an ordinary interstate call that terminates at the premises of the intended recipient, and a second, intrastate communication from the recipient's switch to BellSouth's message storage equipment. Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corporation, 7 FCC Rcd. 1619 at ¶¶ 8-12 (1992). The Commission reasoned that, when an out-of-state caller is connected to the voice mail service, "there is a continuous path of communications across state lines" between the caller and the messaging equipment. Id. ¶ 9. The agency treated the transmission of information over this path as a single communication, and

therefore concluded that BellSouth's service is at least partly interstate for jurisdictional purposes.

The application of these precedents to GTE's ADSL service is straightforward. The end-to-end communications pathway of which ADSL is a part runs from the ISP/LEC customer to the ultimate Internet destination -- typically, an Internet-linked computer hosting the website or email address that the customer wishes to reach. The ISP's facilities are simply an intermediate link in this longer communication chain. Therefore, based on well-established Commission precedent, the customer's Internet traffic "terminates" at the ultimate destination, not at the premises of the ISP. Where that destination is in another state -- as will often be the case with Internet communications -- the traffic is jurisdictionally interstate.

2. GTE's ADSL Service Is an Interstate Access Service.

Several petitioners suggest that GTE's ADSL service is not an access service. As Focal Communications points out, the Communications Act defines "exchange access" as "the offering of access to telephone exchange services or facilities for the purposes of the origination or termination of telephone toll services," and ADSL does not meet this definition because the data traffic it carries is not "telephone toll service." See Pet. of Focal Communications at 2-3. ALTS argues that ADSL is not exchange access because ISPs are not telecommunications carriers. Pet. of ALTS at 9-10.

These arguments successfully demonstrate that ADSL is not an exchange access service -- a point with which U S WEST fully agrees. However, ADSL is more generally an "access service." The Commission's rules define "access service" as including "services and facilities used for the origination or termination of any interstate or foreign telecommunication." 47

C.F.R. § 69.2(b). Plainly, the service originated or terminated does not have to be telephone toll service. Moreover, in the 1996 Act, Congress noted that local exchange carriers may provide “exchange access, information access, and exchange services for such access to interexchange carriers and information service providers.” 47 U.S.C. § 251(g) (emphasis added). Thus, the origination or termination of information services can constitute a general or information access service.

ADSL originates and terminates Internet communications, and therefore qualifies as an access service. Just as exchange access services provide the local connections that make it possible for customers to make non-local (including interstate) telephone calls to and from their own premises, ADSL connections make it possible for customers to access non-local (including interstate) Internet sites. The fact that ADSL is not “exchange access” is irrelevant to the jurisdictional question at issue in this proceeding.

Accordingly, for the reasons set forth in these comments and in the Direct Case of GTE, the Commission should clarify that GTE's ADSL service is an interstate service subject to the Commission's jurisdiction.

Respectfully submitted,



William T. Lake
John H. Harwood II
Lynn R. Charytan
David M. Sohn
Wilmer, Cutler & Pickering
2445 M Street, N.W.
Washington, DC 20037
(202) 663-6000

Robert B. McKenna
Jeffry A. Brueggeman
U S WEST, Inc.
Suite 700
1020 19th Street, N.W.
Washington, DC 20036
(303) 672-2861

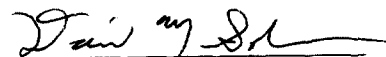
Counsel for U S WEST, Inc.

Dan Poole, Of Counsel

September 18, 1998

CERTIFICATE OF SERVICE

I, David M. Sohn, do hereby certify that on this 18th day of September, 1998, I have caused a copy of the foregoing COMMENTS OF U S WEST, INC. ON DIRECT CASE OF GTE to be served via first-class United States Mail, postage pre-paid, upon the persons listed on the attached service list. Those persons marked with an asterik (*) were served via hand delivery.



David M. Sohn

SERVICE LIST

J. Manning Lee
Teleport Communications Group, Inc.
Two Teleport Drive
Suite 300
Staten Island, NY 10311

Donna L. Lampert
Mintz Levin Cohn Ferris Glovsky & Popeo
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004-2608

Frank W. Lloyd
Mintz Levin Cohn Ferris Glovsky & Popeo
701 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20004-2608

Richard J. Metzger
Association for Local Telecommunications
Services
888 17th Street, NW
Suite 900
Washington, DC 20006

Edward A. Yorgitis
Kelley Drye & Warren
1200 19th Street, NW
Fifth Floor
Washington, DC 20036

Laura Phillips
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Cristy C. Kunin
Blumenfeld & Cohen
1615 M Street, NW
Suite 700
Washington, DC 20036

Barbara A. Dooley
Commercial Internet Exchange Association
1041 Sterling Road
Suite 104A
Herndon, VA 20170

Alan Buzaacott
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, NW
Washington, DC 20036

Michael T. Weirich
Oregon Public Utility Commission
1162 Court Street NE
Salem, OR 97310

Richard M. Rindler
Swindler & Berlin, Chartered
3000 K Street, NW
Washington, DC 20007

Jonathan E. Canis
Kelley Drye & Warren
1200 19th Street, NW
Fifth Floor
Washington, DC 20036

Cheryl Callahan
New York Public Service Commission
2 Empire State Plaza
Albany, NY 12223-1350

Steven Gorosh
Northpoint Communications
222 Sutter Street
San Francisco, CA 94108

Jane Jackson *
Chief, Competitive Pricing Division
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

Judith A. Nitsche *
Chief, Tariff & Price Analysis Branch
Competitive Pricing Division
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

Robert Pepper *
Federal Communications Commission
1919 M Street, NW
Room 822
Washington, DC 20554

Harold Furchtgott-Roth *
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 802
Washington, DC 20554

Roddney L. Joyce
Shook, Hardy & Bacon
1101 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20004-2615

Anatole Nagy
ATU Telecommunications
600 Telephone Avenue, MS 8
Anchorage, AK 99503

James D. Schlichting *
Competitive Pricing Division
Federal Communications Commission
1919 M Street, NW
Room 518
Washington, DC 20554

William E. Kennard *
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 814
Washington, DC 20554

Elliott Maxwell *
Federal Communications Commission
1919 M Street, NW
Room 822
Washington, DC 20554

Susan Ness *
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 832
Washington, DC 20554

Michael K. Powell *
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 844
Washington, DC 20554

Gloria Tristani *
Commissioner
Federal Communications Commission
1919 M Street, NW
Room 826
Washington, DC 20554

R. Michael Senkowski
Gregory J. Vogt
Bryan N. Tramont
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006

John F. Raposa
GTE Service Corporation
600 Hidden Ridge
HQE03J27
Irving, Texas 75038

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, DC 20036

Magalie R. Salas *
Secretary
Federal Communications Commission
1919 M Street, NW
Room 222
Washington, DC 20554

Competitive Pricing Division *
Common Carrier Bureau
Room 518
1919 M Street, NW
Washington, DC 20036

International Transcription Service, Inc. *
1231 20th Street, N.W.
Washington, DC 20036